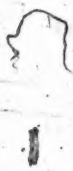

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1945

No. 306

R. MASON,
Petitioner,
vs.
[illegible] IRRIGATION DISTRICT,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

P. M. BARCHILOUX,
Chico, California,
Attorney for Petitioner.

[illegible] CLEWETT,
[illegible], California,
[illegible] D. PETERS,
[illegible], California,
Of Counsel.

[illegible] Printing Co., San Francisco, California

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1945

No. 306

J. R. MASON,
Petitioner,
vs.
PARADISE IRRIGATION DISTRICT,
Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Comes now the respondent Paradise Irrigation District, and files its opposing brief to the petition of petitioner.

STATEMENT.

The statement of the petitioner is substantially correct, although, for a full understanding of the matters involved, respondent believes certain additional matters should be set forth.

The original petition for debt composition of respondent was filed in 1936 in pursuance of paragraphs 78-80 of the Bankruptcy Act, added by Act May 24, 1934, 11 U. S. C. A., sections 301 to 303. Subsequently the latter act was held unconstitutional and the petition ordered dismissed because thereof. The next public act dealing with municipal bankruptcy was Public Act No. 302, approved August 16, 1937, which act was an amendment to "an Act to establish a uniform system of bankruptcy throughout the United States" as approved July 1, 1898, and upon December 20, 1937, respondent filed in the District Court, Northern District of California, its petition for confirmation of composition. (R. 1.) The proceedings have been in Court continuously since said date. The petitioner filed his answer and the matter went to trial upon March 16, 1939; upon February 3, 1941, said District Court entered its findings of fact and conclusions of law (R. 26) and its interlocutory decree. (R. 44.) From such decree the petitioner took an appeal and the United States Circuit Court of Appeals, Ninth Circuit, after hearing, remanded the cause to the lower Court for clarification of two issues:

(1) The maximum amount the District is reasonably able to pay its bondholders in the circumstances, and

(2) To clarify its findings on the question whether the plan of composition provides for deductions from the amount to be paid for coupons which have been voluntarily paid by the District.

The case was again called for trial before the District Court, and in the District Court petitioner offered to amend his answer, by including therein an answer that he be permitted to accept four per cent bonds with accrued interest rather and instead of being required to accept the $525.21 cash for each $1000 par value six per cent gold bond, as required by the interlocutory decree and as contemplated by the plan of composition. The motion was denied by the District Court on two theories, one, that the said answer was before the District Court on the first hearing, and before the Appellate Court on the appeal, and second, that the point had been decided by the higher Courts adverse to appellant's request.

Upon the hearing on remand to the District Court, the latter clarified the question of whether the composition provides for deductions from the amounts to be paid for coupons which were voluntarily paid by the District in appellant's favor, but decided that the composition figure was the maximum amount the District was reasonably able to pay its bondholders in the circumstances. From this petitioner again appealed to the United States Appellate Court, Ninth Circuit, and it is as to the latter Court's decision that petitioner now seeks a writ of certiorari.

PETITIONER'S SPECIFICATION OF ERRORS.

Petitioner contends that the Circuit Court of Appeals erred in two matters, namely,

1. In denying petitioner the privilege of receiving the same refunding 4% bonds with accrued interest, as given the only other creditor at bar, the R.F.C., and ordering petitioner to accept $525.21 cash for each $1000 par value 6% gold bond, the latter being the composition figure approved.

2. In sustaining the decree of the District Court which petitioner claims unlawfully deprives him of substantive and procedural rights governed by State law and decisions, in contravention of State law, the source of the substantive rights and duties of the parties.

REASONS WHY WRIT SHOULD BE DENIED.

1. The proceedings are admitted to be under said Public Act No. 302. This act and acts following it similar in type and character have been consistently approved by this Court and other Federal Courts, and the right of the appellant and other appellants to take bonds of the debtor District in lieu of the cash composition figure, has been passed upon many times, all adversely to the right.

The petition of the District for confirmation of the plan of composition (R. 1) and the exhibits attached thereto disclose in full the plan of composition of the District. The R.F.C. in loaning the money to the District was acting in pursuance of its governmental function for the financial relief of Districts in distress. The plan involved the paying out of money only on the surrender of bonds for cancellation. Appel-

lant's bonds were not so delivered and hence no money has been paid to him, but is available to him when, as and if voluntarily or through decree of Court, he delivers his bonds. Appellant maintains that he desires the bonds instead of the cash and contends he has legal right thereto. This contention was decided adverse to the petitioner in

West Coast Life Insurance Company v. Merced Irrigation District, 114 Fed. (2d) 654;

Lorber v. Vista Irrigation District, 127 Fed. (2d) 628, 143 Fed. (2d) 282.

In the action of *West Coast Life Insurance Company v. Merced Irrigation District,* 114 Fed. (2d) 654, at page 677, the Court in answer to the contention of the West Coast Life Insurance Company that the plan of composition made by said Merced Irrigation District was unfair, states as follows, to-wit:

> "The first contention is as follows:
> 'Assuming that R.F.C. is a creditor of the same standing as the appellants, the plan is unfair because it offers a 4% bond to the R.F.C., but denies a like privilege to the appellants.' "

This is exactly the contention made here under the proposed amendment to the answer of petitioner. In answering such contention the Circuit Court of Appeals, Ninth Circuit, states:

> "Appellants misconstrue the plan and the relationship existing between the District and R.F.C. As we heretofore said, R.F.C. agreed to furnish money to the District to refinance its entire bonded indebtedness at $515.01 for each $1,000 bond. The

obligation assumed by R.F.C. was subject to the condition that all old securities should be purchased and held by R.F.C. until R.F.C. was satisfied that refinancing was complete. During this time, the old securities were to be kept alive and outstanding. When the refinancing was complete, then and then only was R.F.C. under the duty of buying and accepting refunding bonds, and surrendering the old securities for cancellation.

As stated by the Supreme Court in Zavelo v. Reeves, 227 U.S. 625, 632, 33 S.Ct. 365, 368, 57 L.Ed. 676, Ann. Cas. 1914D, 664.

'With respect to the money loaned to the bankrupt for use in paying the consideration of the composition, it is perhaps worth while to remark that Par. 12 of the act. (11 U.S.C.A. No. 30), in prescribing of the time and mode of offering terms of composition, plainly contemplates that a composition in money may be offered, and expressly prescribes that an application for the confirmation of a composition may be made after, but not before, 'The consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority, and the cost of the proceedings, have been deposited in such places as shall be designated by, and subject to the order of, the judge.' And the same section provides that 'Upon the confirmation of a composition the consideration shall be distributed as the judge shall direct, and the case dismissed.'

'The act, of course, contemplates that the bankrupt may acquire the money required for the purposes of the composition by the use of his credit.'

In the present case R.F.C. has contracted to furnish the money necessary to make the composition

effective, and to accept in turn refunding bonds at 4% for the amount of its advance. As holder of the old securities, it is treated exactly as are all other bondholders, it will receive 51.501¢ on the dollar."

From the foregoing it is seen that petitioner's contention has been decided adverse to him.

Petitioner quotes as an authority in support of his contention the decision in the *State of Texas v. Tabasco Cons. School District,* 132 Fed. (2d) 62, 133 Fed. (2d) 196, 142 Fed. (2d) 58. This case has no bearing; there the R.F.C. went out on the open market and bought bonds, becoming thereby an ordinary purchaser with no priority or prior rights. It did not act in the *Texas* case as it did in this case, that is as an agency of the government in the furtherance of a public act of the government for the benefit of the public weal.

It is pointed out that the old bonds of the District having a face value of $476,000.00 have not yet been either returned to the District or destroyed and under the agreement with the R.F.C. are not to be until the plan of composition is concluded, which of course will not be until petitioner's bonds are deposited to be delivered to the R.F.C. upon the payment of the composition figure.

2. Petitioner in his second point contends that the judgment contravenes the well settled rule that State law and decisions govern the substantive and procedural rights of the holders of the bonds of a State or its political subdivision.

The power of Congress to enact a bankruptcy law is derived from provisions in the Federal Constitution. (Article I, Section 8.)

Historically, a prime purpose of bankruptcy law has been to bring about a ratable distribution among creditors of bankrupt assets, and to protect creditors from one another (*Young v. Higbee Co., et al.*, 65 S.Ct. 594); in the instant case the petitioner is seeking preference which no other creditors sought or received. The other creditors received the composition figure, which has been and is now offered the petitioner. The petitioner seeks to claim that he is a creditor of the same status as the R.F.C., but it has been held that a nonassenting creditor in a bankruptcy composition proceedings is not a similar creditor to the R.F.C., but that such a one is in the same class of creditors as original bondholders who accepted the composition; thus petitioner's effort is to receive something more and additional to other bondholders.

The particular point made by the petitioner was passed upon adversely to the petitioner in *United States v. Bekins, et al.*, 58 S.Ct. 811, 304 U.S. 27 (the petition for composition in which action was filed in the District Court on September 21, 1937, the petition in the instant case being filed upon December 20, 1937); this Court held therein that the Municipal Corporations Bankruptcy Act providing for composition of debts of described taxing agencies is not unconstitutional as violative of the Fifth Amendment. Also, that the statute is carefully drawn so as not to impinge upon the sovereignty of the states.

In view of this Court's holding on the very point here considered, the point is not well taken.

3. In addition the petition should be denied because petitioner has not invoked all legal remedies prior to his filing of the petition, he having not petitioned the Appellate Court for a rehearing.

CONCLUSION.

It is respectfully submitted that the petition should be denied; similar petitions under similar facts have been repeatedly denied by this Court.

Dated, Chico, California,
September 5, 1945.

Respectfully submitted,
P. M. BARCELOUX,
Attorney for Petitioner.

H. S. CLEWETT,
JEROME D. PETERS,
Of Counsel.